Rajadurai v Singh & Anor

HIGH COURT (IPOH) — CIVIL SUIT NO 22-332-89
CHIN FOOK YEN JC
5 OCTOBER 1995

Unincorporated Associations *— Club — Misconduct — Inquiries — Natural justice — Good faith — Compliance with rules of club — Appeal — Extraordinary general meeting*

The plaintiff was a member of the Royal Ipoh Club. He was the subject of inquiries by an Inquiry Committee of the club in respect of two complaints against him. The first concerned an allegation that he uttered abuses to a member of the club during a telephone conversation received by that member on club premises. The second concerned an allegation that he assaulted another member in the toilet of the club. The inquiries concluded that the complaints were sustained and it was ordered that the plaintiff be suspended for three months in respect of the first complaint and be expelled in respect of the second complaint. The plaintiff appealed against these decisions to the Extraordinary General Meeting of the club which affirmed the decisions. The plaintiff commenced proceedings against the first and second defendants respectively in their capacities of President of the club at the relevant time and Current President of the club on behalf of the Committee and members of the club, contending that the inquiry was in breach of the club's rules and in breach of natural justice and seeking a declaration that the decisions of the Inquiry Committee and of the Extraordinary General Meeting were null and void; and for damages.

Held, dismissing the claim:

(1) Rule 35.2 of the club had been complied with in relation to the first complaint. It required the complaint to be written and signed.

(2) The misconduct concerning the first complaint took place within the club. The telephone message was intended to be received and was in fact received within club premises.

(3) Rule 35.2 of the club had been complied with in relation to the second complaint.

(4) There was no breach of the rules of natural justice during the inquiries and the Extraordinary General Meeting. The plaintiff had adequate notice of the charges against him. He was represented throughout the inquiry. He was given opportunities to address the extraordinary general meeting and was able to distribute a document during that meeting.

(5) The court was not willing to sit on appeal from decisions based on findings of fact that were supported by prima facie evidence.

(6) The first defendant did not chair the inquiries and the Extraordinary General Meeting out of bad faith but for expediency. The plaintiff had not been able to disprove the defence of good faith.

(7) If there were any defect concerning natural justice at the inquiries, the defect was cured on appeal at the Extraordinary General Meeting, which was a hearing de novo.

[Bahasa Malaysia summary

Plaintif adalah ahli Kelab DiRaja Ipoh. Beliau berada di bawah siasatan satu Jawatankuasa Siasatan kelab berkenaan dengan dua aduan terhadapnya. Yang pertama berkenaan dengan pengataan bahawa beliau mengeluarkan kata-kata kesat terhadap seorang ahli kelab semasa perbualan telefon yang diterima oleh ahli kelab itu di premis kelab. Yang kedua berkenaan dengan pengataaan bahawa beliau menyerang seorang lagi ahli kelab di tandas kelab. Siasatan itu memutuskan bahawa aduan-aduan itu benar dan telah diperintahkan bahawa plaintif digantung selama tiga bulan berhubung dengan aduan pertama dan dipecat berhubung dengan aduan kedua. Plaintif merayu terhadap keputusan ini kepada mesyuarat agung luar biasa kelab itu yang mengesahkan keputusan itu. Plaintif memulakan tindakan terhadap defendan-defendan pertama dan kedua masing-masing dalam keupayaan mereka sebagai Presiden kelab pada masa relevan dan Presiden semasa kelab bagi pihak Jawatankuasa dan ahli-ahli kelab, menegaskan bahawa siasatan itu melanggar keadilan asasi dan menuntut deklarasi bahawa keputusan Jawatankuasa Siasatan dan mesyuarat agung luar biasa adalah batal dan tak sah; dan untuk ganti rugi.

Diputuskan, menolak tuntutan:

(1) Peraturan 35.2 kelab telah dipatuhi berkaitan dengan aduan pertama. Ia memerlukan aduan yang ditulis dan ditandatangani.

(2) Salah laku berkenaan dengan aduan pertama berlaku dalam kelab. Pesanan telefon itu bertujuan untuk diterima dan sebenarnya diterima dalam premis kelab.

(3) Peraturan 35.2 kelab telah dipatuhi berkaitan dengan aduan kedua.

(4) Tidak ada pelanggaran peraturan keadilan asasi semasa siasatan dan mesyuarat agung luar biasa. Plaintif mempunyai notis yang cukup mengenai tuduhan terhadapnya. Beliau diwakili sepanjang siasatan. Beliau diberi peluang untuk mengajukan kepada mesyuarat agung luar biasa dan boleh mengedarkan dokumen semasa mesyuarat itu.

(5) Mahkamah enggan untuk membicarakan rayuan daripada keputusan yang berdasarkan penemuan fakta yang disokong oleh keterangan prima facie.

(6) Defendan pertama tidak mempengerusikan siasatan dan mesyuarat agung luar biasa dengan niat jahat tetapi kerana ia

A adalah wajar. Plaintif telah tidak dapat membuktikan sebaliknya pembelaan suci hati.

(7) Jika ada kecacatan berkenaan dengan keadilan asasi semasa siasatan, kecacatan itu diatasi semasa rayuan di mesyuarat agung luar biasa, yang merupakan perbicaraan de novo.]

B

Notes

For cases on unincorporated associations, see 12 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1630–1760.

C **Cases referred to**

Chong Kok Lim & Ors v Yong Su Hian [1979] 2 MLJ 11 (folld)
Lee v The Showmen's Guild of Great Britain [1952] 2 QB 329 (refd)
Pillai v Singapore City Council [1968] 1 WLR 1278 (folld)
Tanjong Jaga Sdn Bhd v Minister of Labour and Manpower & Anor [1987] 1 MLJ 124 (folld)
D *Weinberger v Inglis* [1919] AC 606 (refd)

SA Almeida (*Almeida & Co*) for the plaintiff.
LH Singh (*L H Singh & Co*) for the defendants.

E **Chin Fook Yen JC:** The plaintiff, a member of the Royal Ipoh Club ('the club') brought this action against the first defendant being the president of the club at the material time and against the second defendant being the president of the club for all intents and purposes of this action praying for, inter alia:

F (a) a declaratory order that the decision of the Inquiry Committee and that of the EGM of the club to suspend and expel the plaintiff from the club is null and void; and

(b) damages to be assessed.

A brief account of the events which led to the suspension and expulsion G of the plaintiff is essential.

Complaint No 1

On the night of 27 May 1989 at about 10.55pm the plaintiff made a telephone call from outside the club premises to the club and specifically H asked to speak to one Louis Putra a member of the club (the first complainant). According to the first complainant, the plaintiff after uttering abusive words, threatened to cause serious problems to him and also to his family for some reasons which the complainant totally denied. The plaintiff, whilst admitting the telephone conversation, completely disputed the contents of the complaint.

I *Complaint No 2*

In the meantime one K Thuljaram another member of the club (the second complainant) reported that on 27 June 1989 about 10.40pm

whilst he was in the toilet of the club, the plaintiff assaulted him by kicking his private part. Needless to say the plaintiff completely denied the incident saying that he never visited the toilet at the material time, let alone assaulted the second complainant.

It should suffice for me to say for the moment that the Committee decided to enquire into the matters. After a couple of postponements, the inquiry commenced on 28 July 1989, into the two complaints and concluded on the same day. The Inquiry then adjourned to 31 July 89 for decisions, which were in respect of Complaint No 1, a suspension for a period of three months and in respect of Complaint No 2 one of expulsion. Against these decisions the plaintiff appealed to the Extraordinary General Meeting ('EGM').

At the EGM on 24 September 1989 several speakers including the plaintiff spoke. The EGM decided and upheld the two decisions of the Inquiry Committee by a big majority. Hence this action.

Before the court, the plaintiff raised several issues including those of breach of rules of natural justice and of the inquiry conducted for want of honesty and unbiasness. I shall now deal with these issues as they have been contended here and before the domestic tribunals.

To begin with the plaintiff's counsel contended that since the number of signatories to Complaint No 1 was, after three of them had withdrawn, only eight, less than ten in number, rule 35.2 (second limb) had not been complied with, adding that the subsequent additional ten signatories did not satisfy the said rule as the same was not attached to Complaint No 1. Rule 35.2, the relevant portion, reads:

> If the conduct of any members shall be brought to the notice of the Committee either by a Member of Committee or by a written complaint signed by ten members of the club, ...

In my opinion the contention does not merit any consideration. Although the subsequent additional signatories were not attached with Complaint No 1, nevertheless it was clear enough for the purpose it was written. These signatories requested the President of the club to investigate and to take appropriate action on the 'Complaint by Mr Lois John Putra on Mr S Rajadurai on 27 May 1989'. I hold that r 35.2 had been fully complied with.

The next issue involves the interpretation of r 28.8 which reads as:

> To take cognizance of any alleged misconduct within the club premises, or any infraction of any members, and to take such action as they may think fit.

The plaintiff's counsel contended that the misconduct, if any, mentioned therein forming the basis for the Committee to assume jurisdiction to inquire was 'not uttered from within the club's premises'. Thus there was no misconduct committed with the meaning of r 28.8 (first limb) and no jurisdiction for the inquiry to be held.

It is common ground that the plaintiff did phone, but from outside the club premises. This situation interesting though it may seem is not

A that complicating. The call was made to the club premises. The message was intended to be received and was in fact received within the club premises. Let me take a case across the border. What is the position of a member of the club, throwing from just outside the gate of the club an explosive into the club premises. Would one say that such a misconduct had nothing to do with the club and the club had no jurisdiction even to enquire? I think not. As the misconduct took place within the club, I hold that this ground must also fail.

In respect of Complaint No 2, plaintiff's counsel again submitted at the inquiry that there was non-compliance of r 35.2 (second limb) in that the Complaint No 2 was not supported by ten signatories. This ground obviously could not hold water, as was pointed out by the president, Complaint No 2 was brought under r 35.2 (first limb) by a member of the Committee. Before the court, the plaintiff's counsel contended on the other hand that the document which bore the endorsements of the two Committee Members concerned was detached from Complaint No 2 itself. Therefore, the document did not satisfy r 35.2 (first limb) in the absence of which there was no basis for the inquiry to be held.

The said document for easy reference is reproduced here:

Kelab Ipoh DiRaja,
Royal Ipoh club,
Jalan Kelab,
30000 Ipoh,
Perak Darul Ridzuan, Malaysia.
PO Box 3,
30700 Ipoh, Malaysia.

To All Committee Members

RE: Complaint of Mr Tuljaram Against Mr Rajadurai Dated 28th June 1989.

I refer to the above complaint, copy attached, which has been endorsed by Committee Members.

To save costs/time, I suggest the committee should inquire into it on 14July 1989 together with the complaint by Mr Louis Putra.

If you agree please signify your consent.

Sd.
Gurdip Singh
President
Complaint is endorsed
1) Sd.
Dr P Subramaniam
2) Sd.
En Naiz Ali

I This document as can be seen was signed by the President, endorsed by two Committee Members concerned and with a copy of Complaint No 2 attached. The contention of non-compliance of r 35.2 (first limb) is untenable.

Next, the plaintiff's counsel contended that there was a breach of the rules of natural justice. What is so magical about the rules of natural justice? In the case of *Lee v The Showmen's Guild of Great Britain* [1952] 2 QB 329 Lord Denning had this to say:

> ... to what extent will the courts examine the decisions of domestic tribunals on points of law? This is a new question which is not to be solved by turning to the club cases. In the case of social clubs, the rules usually empower the committee to expel a member who, in their opinion, has been guilty of conduct detrimental to the club; and this is a matter of opinion and nothing else. The courts have no wish to sit on appeal from their decisions on such a matter any more than from the decisions of a family conference. They have nothing to do with social rights or social duties. On any expulsion they will see that there is fair play. They will see that the man has notice of the charge and a reasonable opportunity of being heard. They will see that the committee observe the procedure laid down by the rules; but they will not otherwise interfere.

This case had been referred to by our then Federal Court in the case of *Chong Kok Lim & Ors v Yong Su Hian* [1979] 2 MLJ 11.

Bearing in mind the principles of natural justice enunciated, I now turn to consider the evidence as provided. The plaintiff could not be said not to have adequate notice of the charges against him. This was never an issue or challenged by the plaintiff at any stage of the proceedings. On the question of whether reasonable opportunity was afforded to the plaintiff, I have made observations of the following.

The plaintiff was represented by a very senior lawyer who was seated beside him throughout both the inquiries. It could not be said that in the particular circumstances the plaintiff could have been deprived of any opportunity of being heard. There was in fact an instance when the plaintiff through his counsel attempted to tender a letter by one Frankie for the purpose of establishing the defence of alibi. I shall revert to this point in a moment. At the EGM the record undoubtedly showed the plaintiff had been given opportunity to address the meeting not once but twice; had in fact distributed a document entitled 'Defence of Rajadurai — A vote for Rajadurai is a Vote to Save the club $60,000'. The greater part of the meeting was taken by speakers canvassing on his behalf. The letter mentioning alibi by Frankie was also distributed by the plaintiff. It surely cannot be said that no opportunity was afforded to him. On the principles enunciated the allegation of breach of rules of natural justice cannot be sustained.

There was an attempt to contend that the utterance of abusive words had not been proved, neither the complaint of assaulting the second complainant been proved. In respect of the utterance of abusive words, it was not disputed that there was a telephone conversation and in respect of Complaint No 2, the evidence from the record showed that Dr Subramaniam stated that he had examined the second complainant in the toilet and found that there was tenderness in the area examined. There were therefore prima facie evidence upon which the inquiries made a finding of fact and decided both the complainants

had proved their cases. This court, therefore, is not willing to sit on appeal from the decision based on a finding of fact in a club case such as this.

I would like to dispose of all the questions of alleged bad faith on the part of the first defendant. The plaintiff's counsel attempted to show that it was bad faith because the first defendant chaired both the inquiries and subsequently the EGM, when he should not have done so, because reference had been made to him at the inquiry stage and also because at the EGM stage he had decided earlier against the plaintiff.

In order to dispose of the question of bad faith, we must understand the particular circumstances of this case. In a social club, everybody knows everybody else. To contend, as in this case, that because a reference had been made of the President, he should have disqualified himself, is, in my opinion, too rigid a rule. In the case of *Tanjong Jaga Sdn Bhd v Minister of Labour and Manpower & Anor* [1987] 1 MLJ 124 the Supreme Court held 'on the matter of natural justice and the right to a hearing, the fundamental proposition about the content of the audi alteram partem rule has been stated time and again: it is variable. The rules are not inflexible principles and may vary in their content in the circumstances of the case.' In my view, the point is not whether the first defendant should have chaired the proceedings, it is whether he had acted in good faith. To my mind he had chaired those proceedings for matters of expediency and not out of bad faith. Judging from the records as provided, there was evidence:

(a) that he had disqualified four (4) committee members to sit at the inquiries because of the possibility of them becoming witnesses in the inquiries;

(b) that he had offered to disqualify himself, but for the fact the parties agreed to retain him at the Chair;

(c) that at the close of the first inquiry, its decision was postponed until the disposal of the second inquiry, so as not to prejudice the plaintiff;

(d) that the entire Committee abstained from voting at the EGM.

In the case of *Chong Kok Lim & Ors v Yong Su Hian* (supra) Hashim Yeop A Sani J (as he then was) referred to *Weinberger v Inglis* [1919] AC 606, 626 where Lord Atkinson said:

> The pith of the respondents' defence is contained in para 9. It runs thus:
>
> > '9. The first-named defendants acting bona fide and honestly in the exercise of their duty and discretion under rule 21 did not re-elect the plaintiff because they did not deem him eligible to be a member of the Stock Exchange for the year in question and for no other reason.'
>
> The burden of disproving these averments rested upon the appellant. Unless he discharged that burden he must, in my opinion, fail.

On the burden of disproving, not only I find the plaintiff had failed to discharge the burden, but, on the other hand, having regard to all the events, I am convinced there was nothing improper about the entire proceedings.

On a more serious note, the first defendant rejected the letter from Frankie in an attempt to prove alibi for the plaintiff on the ground that the maker of the document was not present being hearsay. On a similar tone, he earlier had rejected another letter in favour of the second complainant. I find the first defendant had acted in good faith believing his decision was right. It is difficult for me to say honestly and with certainty that the first defendant had acted in bad faith.

There is still one last point on the rules of natural justice. On the question as to whether the letter on alibi was properly rejected, my view is, the defect, assuming it was a defect, in the original inquiry, could and in fact had been cured by the appeal to the EGM. Under r 35.4 any aggrieved member as a result of the decision made by Inquiry Committee, unless reinstated on appeal, shall not be entitled to the privileges of membership. It is not disputed that the General Meeting is the supreme authority of the club and that all members are taken to have agreed to accept the decisions thereof. This situation is common in almost all social clubs and this club is no exception. The rules of the club give all the powers to the General Meeting.

The appeal in the instant case before the EGM constituted a hearing de novo, where as was mentioned in my judgment earlier, the plaintiff had the opportunity to and in fact did, inter alia, distribute the said letter from Frankie. Thus it could not be said, the plaintiff had not been given reasonable opportunity of being heard. I find my view is supported in the case of *Pillai v Singapore City Council* [1968] 1 WLR 1278 where the court held that, inter alia, if the rules of natural justice had been breached at first instance, the defect was cured on appeal.

For reasons aforesaid, the plaintiff's claim is hereby dismissed with costs.

Claim dismissed.

Reported by PY Lo